

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: April 19, 2006

Division: Growth Management

Bulk Item: Yes ☐ No ☒

Department: Planning

Staff Contact Person: Ronda Norman

AGENDA ITEM WORDING: A public hearing to consider a request for Administrative Relief from James A. Hupp, Doctor's Arm Subdivision 3rd Addition Section B, Lot 32, Big Pine Key, Real Estate Number 00312572.003300.

ITEM BACKGROUND: A building permit was applied for on January 7, 2002, and the ROGO allocation was applied for on February 4, 2002 (Year 10, Quarter 2). The applicant applied for Administrative Relief on April 13, 2005 (Year 13, Quarter 3) and is within the allowable time frame to be eligible for Administrative Relief under Section 9.5-122.2(f) of the Monroe County Code.

PREVIOUS RELEVANT BOCC ACTION: N/A

CONTRACT/AGREEMENT CHANGES: N/A

STAFF RECOMMENDATIONS: Staff recommends denial of the requested Administrative Relief for an allocation award and instead recommends Administrative Relief in the form of an offer to purchase the property.

TOTAL COST: N/A

BUDGETED: Yes N/A No ☐

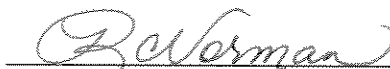
COST TO COUNTY: N/A

SOURCE OF FUNDS: N/A

REVENUE PRODUCING: Yes N/A No ☐ **AMOUNT PER MONTH** N/A **Year** ☐

APPROVED BY: County Atty X OMB/Purchasing ☐ Risk Management ☐

DIVISION DIRECTOR APPROVAL:



Ronda Norman

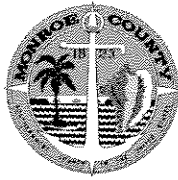
DOCUMENTATION: Included ☒ Not Required ☐

DISPOSITION: _____

AGENDA ITEM # _____

GROWTH MANAGEMENT DIVISION

88800 Overseas Highway
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BOARD OF COUNTY COMMISSIONERS

Mayor Charles "Sonny" McCoy, District 3
Mayor Pro Tem Murray E. Nelson, District 5
Dixie M. Spehar, District 1
George Neugent, District 2
David P. Rice, District 4

To: Board of County Commissioners

From: Ronda Norma, Acting Director of Growth Management *RN*

Date: March 28, 2006

Subject: **James A. Hupp Administrative Relief Request**

Background on Subject Property:

The subject property is located in the Doctor's Arm Subdivision 3rd Addition Section B, Lot 32, Big Pine Key, Real Estate Number 00312572.003300. The property is in the Improved Subdivision (IS) Land Use District. The Property Appraiser records indicates the last ownership transfer occurred on December 1, 1988 and the sale price listed is \$59,000.00. However, there was a Quitclaim Deed filed in 2004 transferring ownership to James Hupp. The current land value is listed in the assessor's records as \$36,000.00. The applicant entered the Residential Rate of Growth Ordinance (ROGO) system on February 4, 2002 (Year 10, Quarter 2). Building permit application #02-1-0058.

The property is on Big Pine Key and is within the National Key Deer Refuge and the Great White Heron Refuge boundaries and the current acquisition area of the Refuge and outside the State C.A.R.L (Florida Forever) project. Also, the property was not listed on the original U.S. Fish and Wildlife Service (USFWS) threatened and endangered species habitat list but due to the Court Injunction on the issuance of new flood insurance policy under the National Flood Insurance Program, the Federal District Court Judge terminated the "technical coordination requirement" with the U.S. Fish and Wildlife Service. However, based on this injunction applicants may not be able to obtain flood insurance since the property's real estate number is on the current list.

Permitting History:

A building permit was applied for on January 7, 2002, and the ROGO allocation was applied for on February 4, 2002 (Year 10, Quarter 2). The application scored an overall total of five (5) points: ten (10) points from planning, four (4) points from the building department (five (5) points for building features and minus one (-1) point for construction in an AE-9/10 flood zone); and an overall negative nine (-9) points from environmental resources (one (1) point as the subject property was determined to be Habitat Protection Group 1, disturbed/scarified, and negative ten (-10) critical habitat Big Pine Key by the Lower Keys Biologist).

Currently, with the addition of three perseverance points, the property scores eight (8) points. The applicant will be awarded one more perseverance point at the end of the 3rd quarter of Year 14, April 13, 2006 for a total of nine (9) points.

These perseverance points have been assigned pursuant to Monroe County Code Section 9.5-122.3(10). Perseverance points: One point is awarded on the anniversary of the controlling date for each year that the applicant remains in the residential ROGO system up to four (4) years. If the applicant remains in the system two points may be assigned to the application on the anniversary of the controlling date for each year over four (4) years that the application remains in the dwelling unit allocation system. Note if, after gaining a perseverance point or points, an application should be withdrawn for any reason, the perseverance point, or points gained shall be retained; however, a new controlling date shall be established as provided in [sub] section 9.5-122.1(a).

The subject property located on San Remo Drive lies between a developed lot and a vacant lot. There are forty-six lots on San Remo Drive of which all are canal front. San Remo Drive has twenty-three developed lots and the remaining are undeveloped. There have been sixteen (16) ROGO allocations granted in the Doctor's Arm Subdivision including the Additions and Sections, and another six (6) are currently in the system awaiting an allocation. This area north of Old State Road 4A has four hundred twenty-five lots of which approximately one hundred ninety lots are developed with a residential use.

Big Pine Key has 9,434 parcels. The following is the number of parcels per Tier: Tier 1: 7,147 parcel, Tier 2: 1,395 parcels, and Tier 3: 892 parcels.

Goal 3 of the Big Pine and No Name Master Plan envisions issuance of 200 residential dwelling units over a twenty-year planning horizon. Currently approximately 60 of the dwelling units have been allocated.

The applicant applied for Administrative Relief on April 13, 2005 (Year 13, Quarter 3) and is within the allowable time frame to be eligible for Administrative Relief under section 9.5-122.2(f) of the Monroe County Code.

Development Potential:

Zoning – The property is zoned Improved Subdivision (IS) which allows single-family residential dwellings and accessory uses. As an IS lot, it has no TDR value under the current code.

Future Lane Use Map (FLUM) – The FLUM indicates the property to be Residential Medium (RM) which is intended for single-family residential use.

Land Type – The property was given a point assignment of one (1) positive point for being in Habitat Group 1 which is defined in Section 9.5-122.3(7) and includes the following: Disturbed/scarified or disturbed with hammock or disturbed with exotics. Group 1 is the least environmentally sensitive category of the four groups described in Section 9.5-122.3(7).

Neighboring Properties – The Doctors Arm area north of Old State Road 4A is approximately 44% developed with residential uses. Not all the vacant parcels are in private ownership. Approximately nineteen(19) of the vacant lots were dedicated to Monroe County from past applicants who dedicated land to increase points on their individual applications in the Dwelling Unit Allocation System and six (6) vacant lots were purchased by the Monroe County Land Authority in this subdivision.

ROGO – The ROGO point system is designed to direct growth to protect natural resources and encourage infill to improved subdivision lots. Land development regulations have been adopted that scores negative ROGO points for any lot on Big Pine Key. The subject parcel is not competitive for ROGO allocations.

Monroe County's Smart Growth Initiatives (Comprehensive Plan Goal 105) further defines areas for future development and areas in which no development may occur. The tiers for Big Pine and No Name Key are defined in Policy 105.2.1 as follows:

1. Natural Area (Tier I): Any defined geographic area where all or a significant portion of the land area is characterized as environmentally sensitive by the policies of this Plan and applicable habitat conservation plan, is to be designated as a Natural Area. New development on vacant land is to be severely restricted and privately owned vacant lands are to be acquired or development rights retired for resource conservation and passive recreation purposes. Within the Natural Area designation are typically found lands within the acquisition boundaries of federal and state resource conservation and park areas, including isolated platted subdivisions; and privately-owned vacant lands with sensitive environmental features outside these acquisition areas.
2. Transition and Sprawl Reduction Area (Tier II): Any defined geographic area, where scattered groups and fragments of environmentally sensitive lands, as defined by this Plan, may be found and where existing platted subdivisions are not predominately developed, not served by complete infrastructure facilities, or not within close proximity to established commercial areas, is to be designated as a Transition and Sprawl Reduction Area. New development is to be discouraged and privately owned vacant lands acquired or development rights retired to reduce sprawl, ensure that the Keys carrying capacity is not exceeded, and prevent further encroachment on sensitive natural resources.
3. Infill Area (Tier III): Any defined geographic area, where a significant portion of land area is not characterized as environmentally sensitive as defined by this Plan, where existing platted subdivisions are substantially developed, served by complete infrastructure facilities, and within close proximity to established commercial areas, or where a concentration of non-residential uses exists, is to be designated as an Infill Area. New development and redevelopment are to be highly encouraged.

The subject property, located in Doctor's Arm Subdivision 3rd Addition Section B, is considered a Transition and Sprawl Reduction Area (Tier II) lot and would be designated as such as a part of Goal 105.

The Habitat Conservation Plan (HCP) for Big Pine Key and No Name Key is pending approval from USFWS. However, the Master Plan for future development of Big Pine Key and No Name Key was adopted August 18, 2004, which included the adoption of the Tier Maps and direction that the dwelling unit allocation system will need to be revised to implement the tier System Overlay Map to be consistent with the Master Plan and HCP. The Tier System adopted by the Board discourages development in Tiers I and II.

The Master Plan for future development of Big Pine Key and No Name states under Strategy 9.2, Action Item 9.2.3: "Encourage the State of Florida to revise the CARL boundaries within the planning area to correspond with coverage of Tier I and Tier II lands as depicted on the Tier System Overlay Map for the purpose of prioritizing purchases". Additionally, Strategy 9.3, Action Item 9.3.1: states "Amend the administrative relief and beneficial use provisions of the Comprehensive Plan and Land Development Regulations to require purchase of land for Tier I applicants and to allow purchase or issuance of permits

for Tier II and Tier III applicants, as appropriate”.

The Ordinance adopting the amendment to the Monroe County Land Development Regulations to revise the Rate of Growth Ordinance {ROGO} was approved by the Board of County Commissioners on March 15, 2006. At this meeting the Board approved the creation of Monroe County Code Section 9.5-124.7(f).

“ (f) *Board action:* At the conclusion of the public hearing, the board may take any or a combination of the following actions:

- (1) Offer to purchase the property at fair market value as the preferred action if the property is located within:
 - a. a designated Tier I area;
 - b. a designated Tier II area (Big Pine Key and No Name Key);**
 - c. a designated Tier III-A area (Special Protection Area); or
 - d. a designated Tier III area on a non-waterfront lot suitable for affordable housing.
- (2) Grant the applicant an allocation award for all or a number of dwelling units requested in the next succeeding quarterly allocation permit or extended pro rata over several succeeding quarterly allocation periods as the preferred action for buildable properties not meeting any of the criteria in (1) above.
- (3) Suggest such other relief as may be necessary and appropriate”.

Goal 207, Monroe County Comprehensive Plan: “Monroe County shall protect and conserve existing wildlife and wildlife habitats”. The subject property is located within the National Wildlife Refuge and the Great White Heron Refuge boundaries.

Eligibility for Administrative Relief Options:

Section 9.5-122.2(f) of the Monroe County Land Development Regulations and Policy 101.6.1 or the 2010 Comprehensive Plan provides a mechanism whereby an application which has not received an allocation award in ROGO may apply to the Board of county Commissioners for Administrative Relief. The applicant is eligible for Administrative Relief having complied with all requirements of the dwelling unit allocation system and having been considered in at least three (3) of the last four consecutive annual allocation periods and having submitted their application for Administrative Relief no earlier than the third annual allocation period and no later than ninety (90) days following the close of the fourth allocation period.

Relief Options under Administrative Relief:

The remedies available to an application for Administrative Relief pursuant to Section 9.5-122.2(f) include issuance of an allocation award, or offer to purchase the property or such other relief as may be necessary or appropriate.

The subject property is located within Tier II on Big Pine Key, an area that has been determined to have *secondary* impacts on the Key Deer due to the distance from US #1 and the potential for a ‘take’ of the species. Because Tier II is a transition area where only limited new development will be allowed, environmentally sensitive lands are present, and there is a potential for secondary impacts on the Key Deer, it is appropriate to continue to restrict the number of residential permits issued in these areas.

The applicant has requested administrative relief in the form of a granting of an allocation and has not expressed a desire to sell the property to the County as provided for under Policy 101.6.1 of the Year 2010 Comprehensive Plan.

Staff Analysis:

The Growth Management Division has reviewed the application and recommends the denial of a ROGO allocation award to the applicant based on the following findings of facts.

Findings of Facts:

1. The James Hupp ROGO application for Doctor's Arm Subdivision 3rd Addition Section B, Lot 32, Big Pine Key received negative ten (-10) points for critical habitat since the property is located on Big Pine Key, which is an area that has been determined to have secondary impacts on the Key Deer due to the distance from US #1 and the potential for a 'take' of the species; and
2. Policy 101.6.1 of the 2010 Comprehensive Plan and Section 9.5-122.2(f) of the Monroe County Land Development Regulations provides a mechanism whereby an applicant who has not received an allocation award in ROGO may apply to the Board of County Commissioners for Administrative Relief; and
3. Strategy 9.3, Action Item 9.3.1 of the Big Pine Master Plan: states "Amend the administrative relief and beneficial use provisions of the Comprehensive Plan and land development regulations to require purchase of land for Tier I applicants and to allow purchase or issuance of permits for Tier II and Tier III applicants, as appropriate" ; and
4. Goal 3 of the Big Pine and No Name Master Plan envisions issuance of 200 residential dwelling units over a twenty-year period and encourages development to occur in infill areas, Tier III. Approximately sixty 60 of the dwelling units have been allocated and 892 vacant parcels remain to be developed in Tier III; and
5. On March 15, 2006, the Board of County Commissioners passed an Ordinance adopting the amendment to the Monroe County Land Development Regulations to revise Sections 9.5-120 through 9.5-123 and Sections 9.5-125 through 9.5-140 (Rate of Growth Ordinance {ROGO}). Pursuant to Section 9.5-122.3(f)(1)b. The board may offer to purchase the property at its fair market value as its preferred action if the property is located within a Tier II on Big Pine Key; and
6. The applicant has been in the ROGO system for four of the last four annual allocations periods and therefore qualifies for Administrative Relief; and

Recommendation: Staff recommends denial of the requested Administrative Relief for an allocation award and instead recommends Administrative Relief in the form of an offer to purchase the property.

cc: Director of Growth Management
Mark Rosch, Monroe County Land Authority

Administrative Relief

RE: 00312572.003300



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Feet

Date: March 2006

RESOLUTION NO. -2006

A RESOLUTION BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS **DENYING** THE REQUEST FOR ADMINISTRATIVE RELIEF MADE BY JAMES HUPP ON THE LOT DESCRIBED AS LOT 32, DOCTOR'S ARM SUBDIVISION 3RD ADDITION, SECTION B, BIG PINE KEY RE#00312572.003300 IN THE FORM OF A DWELLING UNIT ALLOCATION. THE RECOMMENDED RELIEF IS IN THE FORM OF PURCHASE OF THE PROPERTY.

WHEREAS, James Hupp submitted an application for a building permit allocation under the Residential Rate of Growth Ordinance (ROGO) in February 2002; and

WHEREAS, the application has been in the ROGO system for at least four (4) consecutive years; and

WHEREAS, the Board of County Commissions (BOCC) has the authority to grant administrative relief under Section 9.5-122.2(f)(6) and may grant the applicant a building allocation, offer to buy the property at fair market value, or provide such other relief as may be necessary and appropriate; and

WHEREAS, On March 15, 2006, the Board of County Commissioners passed an Ordinance adopting the amendment to the Monroe County Land Development Regulations to revise Rate of Growth Ordinance (ROGO). The Monroe County Code Section for Administrative Relief was amended to include Section 9.5-122.3(f)(1)b: offer to purchase the property at its fair market value as its preferred action if the property is located within a Tier II on Big Pine Key and

WHEREAS, the subject property is in the National Wildlife Refuge and the Great White Heron Refuge boundaries; and

WHEREAS, Policy 101.6.5 of the 2010 Comprehensive Plan provides criteria to be used for determining lands that are appropriate for acquisition and the criteria includes the protection and recovery of threatened or endangered species, such as development on Big Pine Key; and

WHEREAS, the subject canal front property, located in the Doctor's Arm Subdivision 3rd Addition Section B, Big Pine Key is located in a Tier II; and

WHEREAS, the Monroe County Board of County Commissioners makes the following findings of fact and conclusions of law:

1. The James Hupp ROGO application for Doctor's Arm Subdivision 3rd Addition Section B, Lot 32, Big Pine Key received negative ten (-10) points for critical habitat since the property is located on Big Pine Key, which is an area that has been determined to have secondary impacts on the Key Deer due to the distance from US #1 and the potential for a 'take' of the species; and
2. Policy 101.6.1 of the 2010 Comprehensive Plan and Section 9.5-122.2(f) of the Monroe County Land Development Regulations

provides a mechanism whereby an applicant who has not received an allocation award in ROGO may apply to the Board of County Commissioners for Administrative Relief; and

3. Strategy 9.3, Action Item 9.3.1 of the Big Pine Master Plan: states “Amend the administrative relief and beneficial use provisions of the Comprehensive Plan and land development regulations to require purchase of land for Tier I applicants and to allow purchase or issuance of permits for Tier II and Tier III applicants, as appropriate”; and
4. Goal 3 of the Big Pine and No Name Master Plan envisions issuance of 200 residential dwelling units over a twenty-year period and encourages development to occur in infill areas, Tier III. Approximately sixty 60 of the dwelling units have been allocated and 892 vacant parcels remain to be developed in Tier III; and
5. On March 15, 2006, the Board of County Commissioners passed an Ordinance adopting the amendment to the Monroe County Land Development Regulations to revise Sections 9.5-120 through 9.5-123 and Sections 9.5-125 through 9.5-140 (Rate of Growth Ordinance {ROGO}). Pursuant to Section 9.5-122.3(f)(1)b. The board may offer to purchase the property at its fair market value as its preferred action if the property is located within a Tier II on Big Pine Key; and
6. The applicant has been in the ROGO system for four of the last four annual allocations periods and therefore qualifies for Administrative Relief; and

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, THAT:

Administrative relief is granted to James Hupp on Lot 32, Doctor’s Arm Subdivision 3rd Addition Section B, Big Pine Key in the form of an offer to purchase the subject property subject to the following conditions:

1. The applicant may elect to sell the property to Monroe County for conservation purposes, or to remain in the ROGO allocation system until such time as the application receives an allocation.
2. The Executive Director of the Monroe County Land Authority is hereby authorized and directed to negotiate for the purchase of the above described property subject to the approval of the Board of County Commissioners.

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3. **PASSED AND ADOPTED** by the Board of County Commissioners of Monroe County, Florida at a regular meeting held on the _____ day of _____, 2006.

Mayor Charles "Sonny" McCoy _____
Mayor Pro Tem Murray Nelson _____
Commissioner George Neugent _____
Commissioner David Rice _____
Commissioner Dixie Spehar _____

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

BY _____
Mayor Charles "Sonny" McCoy

(SEAL)

ATTEST: DANNY L. HOLHAGE, CLERK

DEPUTY CLERK

